

THOMAS E. MONTGOMERY, County Counsel
County of San Diego
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Attorneys for San Diego County Sheriff

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In Re:)	Case No. 10-22631-MM7
ALEKSANDAR SRECKOVIC,)	Adversary Proceeding No. 11-90176-MM
Debtor.)	
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ALEKSANDAR SRECKOVIC,)	ANSWER OF SAN DIEGO COUNTY
Plaintiff,)	SHERIFF TO COMPLAINT TO
v.)	RECOVER MONIES AND SET ASIDE
SYSCO SAN DIEGO, INC. and SAN)	PREFERENTIAL TRANSFER
DIEGO COUNTY SHERIFF,)	
Defendants.)	
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The San Diego County Sheriff (hereinafter referred to as the "Sheriff"), answers the complaint to recover monies and set aside preferential transfer as follows:

1. In response to Paragraphs 1 through 9 of the complaint, the Sheriff lacks sufficient information and belief to enable it to knowledgably respond to the allegations contained therein and based on such lack of information and belief, generally and specifically denies the allegations contained therein.

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AFFIRMATIVE DEFENSES

2. As a first separate and distinct affirmative defense, the Sheriff alleges that the complaint fails to state sufficient facts to constitute a claim upon which relief may be granted.

3. As a second separate and distinct affirmative defense, the Sheriff alleges that all money received pursuant to the levies were received and distributed to the plaintiff's creditor before the filing of the plaintiff's bankruptcy proceeding and the Sheriff does not now hold any money pursuant to the levies on his accounts.

4. As a third separate and distinct affirmative defense, the Sheriff alleges that to the extent that plaintiff purports to state a cause of action against the Sheriff other than as a mere stakeholder pursuant to the levy, the complaint is barred by the provisions of Government Code section 945.4.

5. As a fourth separate and distinct affirmative defense, the Sheriff alleges that it is not liable for its failure to discharge a mandatory duty in that it exercised reasonable diligence in the discharge of all duties as provided by section 815.6 of the Government Code.

6. As a fifth separate and distinct affirmative defense, the Sheriff alleges that it is not liable by operation of sections 815.2, subdivision (b), and 820.2 of the Government Code in that the injuries and damages, if there were any, were the result of the exercise of the discretion vested in public officers and employees.

7. As a sixth separate and distinct affirmative defense, the Sheriff alleges that it is not liable by operation of sections 815.2, subdivision (b), and 820.4 of the Government Code for the execution or enforcement of the law by public officers or employees exercising due care.

8. As a seventh separate and distinct affirmative defense, the Sheriff alleges that plaintiff's action is barred by the failure of plaintiff to commence the action with the time required by section 945.6 of the Government Code.

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1 WHEREFORE, the Sheriff prays for judgment as follows:

- 2 1. That deny any relief against the Sheriff other than as a mere stakeholder;
3 2. That the Sheriff recover its costs of suit incurred herein; and
4 3. For such other and further relief as the court deems proper and just.

5 DATED: April 28, 2011

THOMAS E. MONTGOMERY, County Counsel

7 By /s/ **Timothy M. Barry**
8 TIMOTHY M. BARRY, Senior Deputy
9 Attorneys for the San Diego County Sheriff
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Declaration of Service

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California.

On April 28, 2011, I served the following documents:

- 1) ANSWER OF SAN DIEGO COUNTY SHERIFF TO COMPLAINT TO RECOVER MONIES AND SET ASIDE PREFERENTIAL TRANSFER

in the following manner:

- ☒ By electronic filing, I served each of the above referenced documents by E-filing, in accordance with the rules governing the electronic filing of documents in the United States District Court for the Southern District of California, as to the following parties:

Larissa L. Lazarus Law Offices of Mark L. Miller 2341 Jefferson Street, Suite 100 San Diego, CA 92110 619-574-0551 larissa@millerlegalcenter.com	Representing Aleksandar Sreckovic (Plaintiff)
Mark L. Miller Law Offices of Mark L. Miller 2341 Jefferson Street, Suite 100 San Diego, CA 92110 619-574-0551 mark@millerlegalcenter.com	Representing Aleksandar Sreckovic (Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 28, 2011, at San Diego, California.

By /s/ **Timothy M. Barry**
TIMOTHY M. BARRY, Senior Deputy
Email: timothy.barry@sdcounty.ca.gov